

**Funding Systems Railcars, Inc.**

TRI-STATE CENTER • SUITE 370 • 2215 SANDERS RD. • NORTHBROOK, IL 60062 • (312) 272-4450

AUG 24 1982 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

August 20, 1982

2-236A030

AUG 24 1982

Date

Fee \$ 50.00

ICC Washington, D. C.

Ms. Agatha Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Madam:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and one copy of Utilization Agreement, a primary document, dated April 23, 1982.

The names and addressess of the parties to the enclosed document are:

Funding Systems Railcars, Inc.
Tri-State Center, Suite 370
2215 Sanders Road
Northbrook, Illinois 60062

The LaSalle & Bureau County Railroad Company
1403 8th Street
LaSalle, Illinois 61301

A general description of the railroad equipment covered by the enclosed document is as follows:

Eighty (80) 52' 6" gondola cars bearing reporting mark LSBC.

The original and all extra copies of the enclosed document should be returned to Ms. Sharon Schumacher of Funding Systems Railcars, Inc., 2215 Sanders Road, Suite 370, Northbrook, Illinois 60062.

Also enclosed is a remittance in the amount of \$50.00 in payment of recordation fees.

I am an officer of Funding Systems Railcars, Inc., and have knowledge of the matters set forth herein.

Very truly yours,

FUNDING SYSTEMS RAILCARS, INC.

By

Dennis T. Hurst..

Interstate Commerce Commission
Washington, D.C. 20423

8/30/82

OFFICE OF THE SECRETARY

Dennis T. Hurst
Funding Systems Railcars, Inc.
2215 Sanders Road, Suite 370
Northbrook, Illinois 60062

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **8/24/82** at **10:25am**, and assigned recordation number(s). **13774**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

UTILIZATION AGREEMENT

Funding Systems Railcars, Inc. (hereinafter referred to as "FSR") agrees to supply and The LaSalle & Bureau County Railroad Company (hereinafter referred to as "LSBC") agrees to accept 60 gondola cars (hereinafter referred to as the "Cars" or a "Car") for placement on the LSBC subject to the terms and conditions of agreement.

1. Scope of Agreement

REGISTRATION NO. 13774A Filed 1425

AUG 24 1982 10 25 AM

INTERSTATE COMMERCE COMMISSION

- A. FSR shall place LSBC identifying marks on the cars: LSBC shall collect all mileage charges and car hire revenues, which will be accounted for separately by LSBC and will be retained in trust by LSBC for the benefit of FSR. LSBC shall provide in writing to FSR, prior to the remarking of the cars, the LSBC identifying marks that will be covered by this Agreement.
- B. LSBC shall register the cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.
- C. LSBC agrees to use its best efforts consistent with LSBC's then current car utilization practices, to keep FSR's cars in regular service and load FSR cars prior to substantially similar foreign line cars.
- D. FSR shall bear cost and expense for movement of the cars to The LaSalle & Bureau County Railroad Company.
- E. LSBC agrees to use its best effort to maximize off-line utilization.

2. Term

- A. The term of this Agreement shall commence on acceptance of the cars into service by LSBC and shall extend until May 15, 1983, unless sooner terminated as hereinafter provided.
- B. This Agreement shall terminate at the option of FSR upon 60 days written notice to LSBC in the event that for a period of three consecutive months off-line utilization of the cars average less than 50%.

3. Railroad Markings and Recordkeeping

- A. Unless prohibited from doing so, LSBC shall during the terms of this Agreement prepare and file all documents related to the registration, maintenance and recordkeeping function normally performed by LSBC with respect to equipment similar to the cars. FSR reserves the right to review the UMLER submissions pertaining to these cars.
- B. LSBC shall, on behalf of FSR, perform all record-keeping functions related to the use of the cars by LSBC and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation.
- C. LSBC will furnish monthly to FSR, copies of the car hire earnings reports received from the railroads and AAR maintenance bills charged to LSBC, relating to the cars covered by this Agreement.
- D. FSR shall indemnify and save harmless the LSBC from all costs, damages and expense resulting from FSR furnishing incorrect cost data for submission to the Universal Machine Language Equipment Register.

4. Maintenance, Taxes, and Insurance

- A. FSR will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each car during the Agreement term and any extension thereof as to such car, including but not limited to repairs, maintenance and servicing provided, however, LSBC shall be responsible for the condition of the cars while on its lines as if the cars were owned by another railroad signatory to the Interchange Rules. FSR will approve all bills prior to payment. Cars will not be used in any type service that would result in extraordinary wear and tear to the cars/equipment.
- B. It is the intent that FSR have all of the rights and obligations of the owner of the equipment, except for any rights reserved or given LSBC herein including but not limited to the right to collect car hire payments. LSBC shall have the right at FSR's expense to perform all such obligations required of an owner under the Code of Interchange Rules promulgated by the AAR and LSBC may make or cause to be made corrections

to "Owner's Responsibility defects as defined in Rule 96 of the FSR's expense to facilitate continued use of a car, but shall not otherwise make any repairs, alterations, improvements or additions to the cars without FSR's prior written consent. LSBC shall follow instructions given by FSR to accomplish such corrections at FSR's expense, including designation of home shop(s) for wreck repair. FSR shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the cars in good operating condition throughout the term of the Agreement. FSR may substitute any or all of the cars with similar gondola cars, upon prior written notice from FSR to LSBC.

- C. FSR agrees, at its expense, to keep the cars adequately insured. FSR reserves the right of subrogation against the responsible parties.
- D. FSR agrees to reimburse LSBC for all taxes, assessments and other governmental charges of whatsoever kind or character paid by LSBC relating to each car which may be accrued, levied, assessed or imposed on LSBC during the term of this Agreement (except for taxes based on LSBC's income.) However, FSR reserves the right to contest any payments for taxes, assessments and other governmental charges.

5. Prohibition to Use Cars as Collateral

LSBC shall not utilize the cars as collateral nor perform or permit any lien or encumbrance of whatever nature to be imposed on any of the cars; nor shall LSBC take or permit any action to be taken which would or could in any manner affect the clear title or interest of FSR in said cars except for liens, if any, arising from the failure of FSR to pay for maintenance expenses, taxes, insurance and approved capital improvements.

The rights of LSBC to the use of the cars supplied pursuant to this Agreement are subject and subordinate to the rights of any owner, Trustee, vendor or secured party given in connection with acquisition and financing of the cars.

6. Collections

- A. LSBC shall collect all car hire (per diem) and mileage earned by the cars each month and remit to FSR the amount collected each month less AAR maintenance bills charged to LSBC on the cars in the month, within 60 days after each service month.
- B. LSBC shall bear no per diem or mileage costs while the cars are empty on its railroad, and LSBC's use of the cars without charge while empty on its lines shall constitute its sole and exclusive compensation under this Agreement.
- C. FSR agrees that the hourly car hire charges for the gondola cars subject to this Agreement shall not exceed sixty cents (\$.60) per car per hour.
- D. LSBC agrees that it will not grant either full or partial car hire relief, on any equipment subject to this Agreement without the express written consent of FSR. Also, LSBC agrees that it will not change the applicable car hire rates, both time and mileage, without the express written consent of FSR.

7. Termination

- A. At the expiration or termination of this Agreement as to any of the cars, LSBC will surrender possession of such cars which are on LSBC's railroad lines or on the line of any affiliate of LSBC to FSR, by delivering the cars empty and free of product accumulation to any LSBC interchange point free of freight charges. LSBC agrees to follow FSR's instructions in directing railroads in possession of the cars to return the cars to railroad lines designated by FSR.
- B. FSR shall accomplish such removal and replacement of railroad markings by either (i) directing LSBC to do so as to units in LSBC's possession or (ii) arranging to have the railroad in possession perform such work, all at FSR's expense.
- C. In the event the cars supplied to LSBC shall be destroyed or otherwise become unavailable for service,

this Agreement as to any such car shall automatically terminate and FSR shall be released from any further liability to LSBC as to any such car.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement, this 23rd day of April, 1982.

FUNDING SYSTEMS RAILCARS, INC.

By J. M. Ball
Title
Executive Vice President

THE LASALLE & BUREAU COUNTY RAILROAD CO.

By John W. Johnson
Title

Certificate of Acceptance

To: Funding Systems Railcars Inc.
2215 Sanders Road
Northbrook, IL 60062

I, a duly appointed and authorized representative of LaSalle & Bureau County Railroad Company do hereby certify that I have inspected, approved and accepted delivery under the Agreement dated as of April 23, 1982, with Funding Systems Railcars Inc., of the following Items of Equipment:

TYPE OF EQUIPMENT: 100-Ton, 52'-6" Gondola Cars

PLACE ACCEPTED:

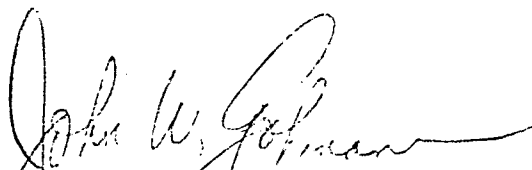
NUMBER OF UNITS: 25

MARKED AND NUMBERED: LSBC 5010, 5019, 5020, 5037, 5043, 5044, 5050, 5057, 5066, 5070, 5079, 5081, 5087, 5088, 5097, 5098, 5103, 5108, 5111, 5121, 5138, 5146, 5148, 5149, 5155

I do further certify that the foregoing Items of Equipment are in good order and condition, and that each Item is labeled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.


Inspector and Authorized
Representative of the LaSalle
& Bureau County Railroad Company

Dated: 7/18/82

Certificate of Acceptance

To: Funding Systems Railcars Inc.
2215 Sanders Road
Northbrook, IL 60062

I, a duly appointed and authorized representative of LaSalle & Bureau County Railroad Company do hereby certify that I have inspected, approved and accepted delivery under the Agreement dated as of April 23, 1982, with Funding Systems Railcars Inc., of the following Items of Equipment:

TYPE OF EQUIPMENT: 100-Ton, 52'-6" Gondola Cars

PLACE ACCEPTED:

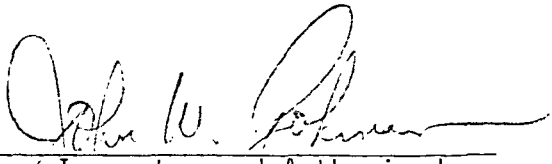
NUMBER OF UNITS: 30

MARKED AND NUMBERED: LSBC 5077, 5080, 5082, 5083, 5085, 5090, 5092 thru
5095, 5099, 5100, 5104, 5114, 5116, 5119, 5122,
5123, 5128, 5131, 5132, 5137, 5140, 5144, 5145,
5150, 5154, 5162, 5163, 5165

I do further certify that the foregoing Items of Equipment are in good order and condition, and that each Item is labled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.


Inspector and Authorized
Representative of the LaSalle
& Bureau County Railroad Company

Dated: 4/16/82

Certificate of Acceptance

To: Funding Systems Railcars Inc.
2215 Sanders Road
Northbrook, IL 60062

I, a duly appointed and authorized representative of LaSalle & Bureau County Railroad Company do hereby certify that I have inspected, approved and accepted delivery under the Agreement dated as of April 23, 1982, with Funding Systems Railcars Inc., of the following Items of Equipment:

TYPE OF EQUIPMENT: 100-Ton, 52'-6" Gondola Cars

PLACE ACCEPTED:

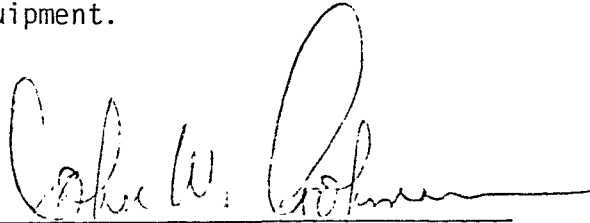
NUMBER OF UNITS: 25

MARKED AND NUMBERED: LSBC 5168, 5171, 5172, 5174, 5177, 5182, 5185, 5188, 5200, 5201, 5209, 5211, 5219, 5220, 5221, 5222, 5226, 5231, 5235, 5251, 5252, 5253, 5255, 5259, 5261

I do further certify that the foregoing Items of Equipment are in good order and condition, and that each Item is labeled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.



Inspector and Authorized
Representative of the LaSalle
& Bureau County Railroad Company

Dated: 2/16/82